Filed 11/23/09 In re M.F. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re M.F., a Person Coming Under the Juvenile Court Law.	B214625
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.C., et al., Objectors and Appellants; M.F., Respondent.	(Los Angeles County Super. Ct. No. CK49405)

APPEAL from an order of the Superior Court of Los Angeles County. James K. Hahn, Judge. Reversed.

Aida Aslanian, under appointment by the Court of Appeal, for Objectors and Appellants A.C. and A.A.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Objector and Appellant J.F.

Roni Keller, under appointment by the Court of Appeal, for Respondent M.F., minor.

No appearance on behalf of Plaintiff and Respondent.

In this appeal, minors J.F., A.C., and A.A. (collectively, the siblings), siblings of the subject minor M.F. (minor), challenge the juvenile court's determination, at a March 4, 2009 review hearing concerning minor, that they were not entitled to notice of that hearing or of any future hearings concerning minor. Because Welfare and Institutions Code section 295[1] requires that such notice be provided, we reverse the juvenile court's March 4, 2009 order finding that the Department of Children and Family Services (the Department) is not required to provide the siblings with notice of future hearings.

BACKGROUND[2]

In November 2002, minor and the siblings were adjudged to be dependents of the juvenile court. On April 25, 2008, the juvenile court terminated parental rights over minor, and found that the sibling relationship exception to terminating parental rights under section 366.26, subdivision (c)(1)(B)(v) did not apply. The juvenile court further found minor to be adoptable by his legal guardian, Ms. C. The juvenile court did not order sibling visitation, but strongly encouraged it. On March 5, 2009, this court affirmed the order terminating parental rights.

At a post-permanent plan review hearing held on September 3, 2008, the Department informed the juvenile court that an issue had arisen concerning minor's prospective adoption by Ms. C. The Department reported that it had informed Ms. C. that the amount of assistance payments available after minor's adoption would be $561 less per month than the amount she had been receiving while acting as minor's legal guardian. Ms. C. told the Department's social worker that the reduced assistance

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1 All further statutory references are to the Welfare and Institutions Code.

2 Much of the facts are set forth in our previous opinion affirming the juvenile court's order terminating parental rights over minor. (*In re M.F.* (Mar. 5, 2009, B207657) [nonpub. opn.].) We restate the relevant facts as necessary.

payments would not be sufficient to meet minor's expenses and that although she still wished to adopt minor, she wanted the monthly assistance payments to remain unchanged. The Department reported that it could not proceed with the adoption for this reason. At the conclusion of the hearing, the juvenile court ordered legal guardianship as the permanent plan for minor and also ordered sibling visits every other week for three hours. The court set the next review hearing for March 4, 2009.

In a status review report prepared for the March 4, 2009 hearing, the Department reported that minor remained appropriately placed with his legal guardian, Ms. C., who continued to meet the child's medical and emotional needs. Minor and the siblings visited every other week on Wednesdays. The visits usually lasted for only one hour because the children were tired after a full day of school and because minor's disabilities hindered his ability to stay in one place for more than an hour. The Department recommended that minor remain placed with Ms. C. and that legal guardianship be continued as the appropriate permanent plan.

Notice of the March 4, 2009 review hearing was served only on minor and Ms. C. and took place without the siblings. At the hearing, minor's counsel asked the juvenile court to change the permanent plan from legal guardianship to adoption, because Ms. C. wanted to adopt minor and was working with the Department to increase the amount of her post-adoption monthly assistance payments. Counsel for the Department stated that the Department had no objection to changing the permanent plan to adoption. The juvenile court found that notice of the proceedings had been given as required by law, that it had read and considered the Department's report dated March 4, 2009, and that new information had been provided by minor's counsel, confirmed by counsel for the Department, that Ms. C. now wished to pursue adoption. The juvenile court found minor to be adoptable and that continued jurisdiction was necessary. The court then ordered that the permanent plan of legal guardianship for minor be changed to legal guardianship with the goal of adoption, with September 2, 2009, as the likely date by which the plan would be finalized.

At that point, Angela Torres (Torres), counsel for A.C. and A.A., appeared and advised the juvenile court that the siblings had not been notified that there was going to be a change in the permanent plan: "Your honor, Angela Torres, C.L.C. 2. I represent the siblings. We're on tomorrow. The only issue I have -- I just -- I think my siblings -- my client, as well as Ms. Heath-Rondilla's [counsel for J.F.], need to be notified that there was going to be a change in plans because referee Berman --" Minor's counsel interjected and objected to Torres's appearance, on the ground that the siblings were not parties to the case. Torres responded by pointing out that the juvenile court had previously ordered sibling visits, and that a change in the permanent plan could put her clients "in limbo." Both minor's counsel and counsel for the Department stated that no one had asked for a change in the sibling visitation order and that the juvenile court had not altered that order. The juvenile court then made the following statement regarding notice:

> "Yes because I don't -- there is no requirement to notify anybody. Obviously, the court is aware that an appeal is pending[**3**] and nothing can be finalized until that appeal is concluded in which we will know one way or the other. Since the permanent plan has already been established as legal guardianship and the parental rights have been terminated, the legal guardian, obviously, has the ability to pursue adoption and that's the only party that needs to be notified."

The juvenile court then set a progress hearing for April 29, 2009. This appeal followed.

DISCUSSION

Section 295 governs notice of review hearings held pursuant to section 366.3. The statute requires that notice of such hearings be given to specified persons, including siblings who are dependents of the juvenile court: "Notice of the hearing shall be given to . . . [¶] . . . [a]ny known sibling of the child who is the subject of the hearing if that sibling is either the subject of a dependency proceeding or has been adjudged to be a

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3 At the time of the March 4, 2009 hearing, the siblings' appeal of the April 24, 2008 order terminating parental rights was still pending in this court.

dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day." (§ 295, subd. (a)(5).)[4] The statute excludes from the notification requirements a parent whose parental rights have been terminated. (§ 295, subd. (b).)

Section 295, subdivision (d) specifies the information that must be included in the notice: "The notice of the review hearing shall contain a statement regarding the nature of the hearing to be held, any recommended change in the custody or status of the child, and any recommendation that the court set a new hearing pursuant to Section 366.26 in order to select a more permanent plan."

Subdivision (e) of section 295 requires the notice to be served by first-class mail, and subdivision (f) states that if a petition is filed to terminate or modify a previously ordered permanent plan of legal guardianship, notice of the petition must be served no less than 15 court days prior to the hearing.

The plain language of section 295 requires the Department to provide the siblings with notice of review hearings in minor's dependency case. The sibling notification requirement, unlike parental notification, remains even after parental rights have been terminated and adoption has been ordered as the permanent plan. (§ 295.)

Providing notice to the siblings advances the public policy expressed in the statute's legislative history of encouraging, promoting, and strengthening sibling relationships among dependent children. The legislative history to section 295 indicates that one of the ends to be achieved by sibling notification is to provide the juvenile court with information about sibling relationships when making determinations concerning an appropriate permanent plan: "Siblings whose dependency cases are on different tracks or have different procedural postures are not necessarily heard by the juvenile court on the

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[4] The statute also requires that notice be given to the child, if the child is 10 years of age or older; the child's mother; presumed father; legal guardian; and current caregiver. (§ 295, subds. (a)(1)-(4), (6).)

same day. Under current law, siblings do not receive notice of each other's hearings. Siblings often have different attorneys, and may have different social workers and caregivers as well. Consequently, important information about a sibling, the sibling relationship, or extended family is not available to the relevant parties, the advocates, or the court. This lack of coordination interferes with the court's inability to fashion proper and effective orders." (Sen. Rules Com., Off. Of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 579 (2003-2004 Reg. Sess.) as amended Sept. 8, 2003, p. 2.)

The legislative history further states that the sibling notification requirement is part of a broader statutory framework intended to "promote the preservation and strengthening of sibling relationships in the placement of dependent children in foster care and in adoptive or guardianship homes." (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 579 (2003-2004 Reg. Sess.) June 10, 2003, p. 1.) Under section 16002, for example, the local child welfare agency is required to exert "diligent effort" "to provide for ongoing and frequent interaction among siblings" even after a dependent child has been ordered to adoption, and to "[e]ncourage prospective adoptive parents to make a plan for facilitating postadoptive contact between the child . . . and any siblings of [the] child." (§ 16002, subds. (b), (e).)

Minor's counsel argues that because counsel for A.C. and A.A. appeared at the March 4, 2009 hearing, the siblings "presumably" or "more likely than not" had actual notice of the hearing. Section 295 contains no exception for presumed, likely, or actual notice. The statute requires that notice must be served on a sibling unless the sibling has a matter calendared in the same court on the same day. (§ 295, subd. (a)(5).) The record shows that although counsel for A.C. and A.A. happened to be present at the March 4, 2009 hearing, neither sibling had a matter calendared in the juvenile court that day.

Minor's counsel contends the siblings' appeal is invalid because they fail to demonstrate how they could have affected the outcome of the March 4, 2009 hearing. Minor's counsel maintains that the siblings could not have prevented the court's selection and implementation of adoption as the permanent plan because that issue had already been litigated. Minor's counsel also points out that the juvenile court's previous sibling

visitation order was not changed during the March 4, 2009 hearing. The siblings do not challenge any of the findings or orders made by the juvenile court at the March 4, 2009 hearing, apart from the court's determination that only minor's legal guardian need be given notice of future proceedings in minor's case. They may do so in this appeal.

Minor's counsel claims the siblings' appeal is not ripe because they did not file a petition under section 388 to set aside any of the juvenile court's findings and orders of March 4, 2009, for lack of notice. Minor's counsel argues that the notice issue cannot be adjudicated in this appeal because "there has not been a hearing in the juvenile court on the foundational facts, including whether the siblings were entitled to notice, whether the siblings had actual, if not formal statutory, notice of the hearing, and whether the siblings[']presence on March 4, 2009, could have had any possible impact on the proceedings."[5] The filing of a section 388 petition was not necessary. It is undisputed that the siblings were not provided with notice as required by section 295 and that the juvenile court determined they were not entitled to such notice. The siblings' challenge to that determination is the proper subject of this appeal.

Minor's counsel contends that failure to provide the siblings with statutory notice of the March 4, 2009 hearing was harmless error because no rulings adverse to the siblings' interest were made at that hearing. Minor's counsel further contends that because the siblings were not aggrieved by any of the rulings issued at the March 4, 2009 hearing, they lack standing and their appeal should be dismissed on that basis. At the March 4, 2009 hearing, the juvenile court ruled that only minor's legal guardian need be notified of future hearings in minor's dependency case. The siblings were aggrieved by, and have standing to challenge that ruling.

Section 295 requires the Department to provide the siblings with notice of review hearings in minor's dependency case. Although the juvenile court's minute order dated

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5 Minor's counsel also moved to dismiss the siblings' appeal on the ground that the notice issue was not raised in their notice of appeal and that this court lacks jurisdiction to decide that issue. We disagree. Notices of appeal are liberally construed in favor of sufficiency (Cal. Rules of Court, rule 8.100(a)(2)), and the issue presented is cognizable on appeal.

March 4, 2009 requires the Department to provide notice of future hearings to "All Appropriate Parties," that order is inconsistent with the court's oral pronouncement that only minor's legal guardian need be notified of future proceedings. Because the reporter's transcript of the proceedings prevails over an inconsistent minute order when the two are in conflict (*In re Moss* (1985) 175 Cal.App.3d 913, 928), the juvenile court's order must be reversed to direct the Department to provide notice of future hearings to the siblings' respective caregivers and attorneys and to any sibling 10 years of age or older. (§ 295, subd. (a)(5).)

DISPOSITION

The juvenile court's order of March 4, 2009 is reversed, and the juvenile court is ordered to enter a new order that requires the Department to provide notice of future hearings in minor's dependency case to the respective caregivers and attorneys of minor's siblings, and to any sibling 10 years of age or older.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD